Nos. 14-556, 14-562, 14-571, 14-574

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Supreme Court of the United States

No. 14-556

JAMES OBERGEFELL, *et al.*, and BRITTANI HENRY, *et al.*,

Petitioners,

—v.—

RICHARD HODGES, Director,
Ohio Department of Health, *et al.*,

Respondents.

(Caption continued on inside cover)

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF *AMICI CURIAE* SURVIVORS OF SEXUAL ORIENTATION CHANGE THERAPIES IN SUPPORT OF PETITIONERS, URGING REVERSAL

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No. 14-562

VALERIA TANCO, *et al.*,

Petitioners,

—v.—

BILL HASLAM, Governor of Tennessee, *et al.*,

Respondents.

No. 14-571

APRIL DEBOER, *et al.*,

Petitioners,

—v.—

RICK SNYDER, Governor of Michigan, *et al.*,

Respondents.

No. 14-574

GREGORY BOURKE, *et al.*, and TIMOTHY LOVE, *et al.*,

Petitioners,

—v.—

STEVE BESHEAR, Governor of Kentucky, *et al.*,

Respondents.

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INTEREST OF *AMICI CURIAE*[1]

Amici Curiae are five survivors of the dangerous and discredited therapies and treatments, collectively known as "sexual orientation change efforts" ("SOCE"), that are used to try to change a person's sexual orientation, the mother of one of the survivors, and the sister of a man who was subjected to SOCE as a child and later committed suicide.

Amici submit this brief to recount the serious harms that they, their families, and others suffered because they were subjected to these dangerous practices that attempt to change the unchangeable. Their experiences profoundly bear on the issue of marriage equality before the Court, illustrating that sexual orientation is an immutable trait providing no basis for unequal treatment under the law, and that lesbian, gay, bisexual and transgender ("LGBT") people experience widespread discrimination and prejudice as a class that continues to this day. *Amici* urge that the Court recognize sexual orientation as a suspect classification under the Fourteenth Amendment's Equal Protection Clause and declare the challenged laws that deny LGBT people the right to marry based solely on their sexual orientation unconstitutional.

John Metzidis-Drennan, Ryan Kendall, Peter Drake, and James Guay endured serious harms as a result of the futile efforts to change a fundamental part of who they are and always will be. Maris

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution to the preparation or submission of this brief. Consent of the parties to the filing of this brief has been obtained and filed with the Clerk of the Court.

Ehlers's brother, Kirk Andrew Murphy, was subjected to SOCE as a child and later took his own life after despairing about his inability to change his sexual orientation. These *amici* previously shared their experiences with this Court through *amicus curiae* briefs submitted in *United States v. Windsor*, 133 S. Ct. 2675 (2013) and, with one exception, in *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013). Ryan Kendall was not an *amicus* in *Hollingsworth v. Perry* because he testified in that case at trial. They also submitted *amicus curiae* briefs to the Courts of Appeals for the Third Circuit and the Ninth Circuit in support of the constitutionality of New Jersey and California laws prohibiting licensed mental health professionals from practicing SOCE on minors. *King v. Governor of N.J.*, 767 F.3d 216 (3d Cir. 2014); *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014). Mathew Shurka and his mother, Jane Shurka, join the *amici* in these cases to describe the harm that they and their family suffered due to the terrible and fruitless attempt to change Mathew's identity. *Amici* have an interest in eliminating the state sanctioning of the animosity and prejudice toward LGBT people that led to the harms that they have suffered, including exposure to SOCE and the denial to them of the right to marriage equality.

SUMMARY OF ARGUMENT

Sexual orientation should be recognized as a suspect classification under the Equal Protection Clause of the Fourteenth Amendment because LGBT people as a class have long been subjected to discrimination based on their immutable characteristics that provide no basis for unequal

treatment. Although sexual orientation need not be immutable for heightened scrutiny to apply, *see Bowen v. Gilliard*, 483 U.S. 587, 602 (1987) (looking to whether a class "exhibit[s] obvious, immutable, *or* distinguishing characteristics that define them as a discrete group" (emphasis added)), where a community is singled out for discrimination based on an inherent characteristic that *is* immutable, heightened scrutiny is particularly appropriate.

Amici's experiences as survivors of SOCE, which are representative of the experiences of countless other LGBT people, illustrate the immutability of sexual orientation and the history of discrimination and animosity faced by LGBT people based solely on an inherent trait that bears no relationship to their ability to contribute to society. For these reasons, this Court should reverse the decision of the United States Court of Appeals for the Sixth Circuit and strike down the discriminatory marriage laws of Kentucky, Michigan, Ohio, and Tennessee.

ARGUMENT

I. SEXUAL ORIENTATION IS A SUSPECT CLASSIFICATION UNDER THE EQUAL PROTECTION CLAUSE BECAUSE LGBT PEOPLE HAVE HISTORICALLY BEEN SUBJECTED TO DISCRIMINATION BASED ON IMMUTABLE CHARACTERISTICS THAT BEAR NO RELATIONSHIP TO THEIR ABILITY TO CONTRIBUTE TO SOCIETY

In *United States v. Windsor*, this Court held that the federal government's refusal to recognize same-sex marriages "impose[s] a disadvantage, a

separate status, and so a stigma" on gay and lesbian relationships, "demean[ing]" same-sex couples by treating their lasting and committed relationships as "unworthy of federal recognition," and "humiliat[ing] tens of thousands of children now being raised by same-sex couples." *Windsor*, 133 S. Ct. at 2693-94. Subsequently, nearly every court to consider the issue has applied the reasoning of *Windsor* to hold unconstitutional marriage and marriage recognition laws that discriminate based on sexual orientation. *See, e.g.*, *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014); *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014); *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014); *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014).

In the instant case, the United States Court of Appeals for the Sixth Circuit, alone among the Circuits, upheld the discriminatory marriage laws of Kentucky, Michigan, Ohio, and Tennessee, under the highly deferential rational basis review of equal protection challenges. *DeBoer v. Snyder*, 772 F.3d 389, 407-08 (6th Cir. 2014). These laws cannot survive even the most deferential level of scrutiny, as there is no rational basis that could justify their differential treatment of same-sex and opposite-sex relationships. Hence, the Sixth Circuit's decision should be reversed on its own analytical terms. It is, however, time for this Court to expressly hold that sexual orientation is a suspect classification for the purposes of equal protection jurisprudence and subject the challenged laws to a heightened scrutiny.

Amici's experiences reveal the extent that LGBT people have been and continue to be subjected to discrimination and prejudice, based solely on inherent traits that provide no justification for

unequal treatment. The harmful and lasting effects of the stigma demonstrate that this discrimination "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954). *Amici*'s experiences also illustrate that a person's sexual orientation, like his or her race, is an immutable characteristic. For nearly 40 years, the leading mental health professional associations have recognized that homosexuality is not an illness or disorder that can or should be changed. Homosexuality was removed from the Diagnostic and Statistical Manual of Mental Disorders ("DSM") in 1973, and remains absent from the DSM-5, the latest edition. *See* DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013). The American Psychological Association ("APA") has "rejected the stigma of mental illness that the medical and mental health professions had previously placed on sexual minorities." AM. PSYCHOLOGICAL ASS'N, REPORT OF THE TASK FORCE ON APPROPRIATE THERAPEUTIC RESPONSES TO SEXUAL ORIENTATION 11 (2009).

This scientific and medical consensus has become widely accepted over the past decades, to the point where there is so "great an analytical gap between the data and the opinion proffered" by the advocates of SOCE that they would not qualify to testify as expert witnesses. *See Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). Last year, this near-universal agreement among mental health professionals was recognized by two Courts of Appeals in the course of rejecting First Amendment challenges to state laws banning

licensed practitioners from subjecting minors to SOCE. *See King*, 767 F.3d at 221-22; *Pickup*, 740 F.3d at 1222-24. And earlier this year, a New Jersey Superior Court excluded SOCE practitioners as expert witnesses because there was no reliable foundation for their testimony. Opinion at 19, *Ferguson v. JONAH*, No. HUD-L-5473-12 (N.J. Super. Ct. Feb. 5, 2015), *available at* http://www.splcenter.org/sites/default/files/downloads/case/jonahopinion.pdf ("The overwhelming weight of scientific authority concludes that homosexuality is not a disorder or abnormal. The universal acceptance of that scientific conclusion—save for outliers such as JONAH—requires that any expert opinions to the contrary must be barred.").

There is no reliable evidence or continued basis for believing that a person can change his or her sexual orientation. In 2000, the National Association of Social Workers concluded that "lesbians and gay men are often pressured to seek reparative or conversion therapies, which ***cannot and will not change sexual orientation***. . . . No data demonstrate that reparative or conversion therapies are effective. . . ." NAT'L COMM. ON LESBIAN, GAY, & BISEXUAL ISSUES, NAT'L ASS'N OF SOCIAL WORKERS, Position Statement, *"Reparative" and "Conversion" Therapies for Lesbians and Gay Men* (Jan. 21, 2000) (emphasis in original). In 2000, the American Psychiatric Association also opposed the practice of SOCE because it is "at odds with the scientific position . . . that homosexuality per se, is not a mental disorder," and explained that "there are no scientifically rigorous outcome studies . . . [and] sparse scientific data" to support the position that SOCE can change an individual's sexual

orientation. AM. PSYCHIATRIC ASS'N, Position Statement, *Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies)* (May 2000). In 2009, an American Psychological Association task force conducted a comprehensive review of scientific studies on the effectiveness of SOCE, and concluded that "the peer-refereed empirical research . . . provides little evidence of efficacy" in reducing or eliminating same-sex attraction. AM. PSYCHOLOGICAL ASS'N, REPORT OF THE TASK FORCE ON APPROPRIATE THERAPEUTIC RESPONSES TO SEXUAL ORIENTATION 35 (2009).

The one prominent study that purported to show that SOCE could result in changes in sexual orientation has been renounced by its author, Dr. Robert Spitzer, who explained that his methodology was deeply flawed and apologized to the gay community for "making unproven claims of the efficacy of reparative therapy." Robert L. Spitzer, Letter to the Editor, *Spitzer Reassesses his 2003 Study of Reparative Therapy of Homosexuality*, 41 ARCHIVES SEXUAL BEHAV. 757 (2012).

As the District Court found in *Perry v. Schwarzenegger*: "No credible evidence supports a finding that an individual may, through conscious decision, therapeutic intervention or any other method, change his or her sexual orientation." *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 966 (N.D. Cal. 2010). It is past time that the immutability of sexual orientation is recognized by the courts for the purposes of equal protection analysis. *See Lawrence v. Texas*, 539 U.S. 558, 578-79 (2003) ("Had those who drew and ratified the Due Process Clauses of the Fifth Amendment

or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight. They knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.").

II. THE EXPERIENCES OF PEOPLE SUBJECTED TO SOCE SHOW THAT A PERSON'S SEXUAL ORIENTATION IS AN IMMUTABLE CHARACTERISTIC, AND THAT LGBT PEOPLE EXPERIENCE WIDESPREAD DISCRIMINATION AND PREJUDICE THAT CONTINUES TO THIS DAY

A. John Metzidis-Drennan

Around the age of 14, when John Metzidis-Drennan realized that he was attracted to men, he felt immense shame, as he had been struggling with the fear that he was gay since early childhood. Raised in a politically conservative household in Orange County, California, John saw that his community viewed being gay as disgusting and shameful. As a child, he was often teased by other children and called derogatory names like "gay boy" and "faggot," and thus learned to be careful about the way he spoke, the way he carried himself, and the interests and hobbies he pursued, lest anything be perceived by others as too effeminate or "gay."

Due to the stigma associated with homosexuality, John was not prepared to accept his sexual orientation, which he saw as a "problem" or "defect" that needed to be "cured." After graduating high school, John began reading about the "ex-gay" movement, and was drawn to the purportedly more secular forms of SOCE practiced by the National Association for Research and Therapy of Homosexuality ("NARTH") and Dr. Joseph Nicolosi, which taught that it was possible to change one's sexual orientation. At the age of 20, John sought out a SOCE practitioner and began undergoing weekly sessions of "reparative therapy" with Scott Sutherland, a therapist at Dr. Nicolosi's clinic.

Like many others who voluntarily seek out SOCE, John was initially hopeful at the prospect of changing his sexual orientation, and for a period believed that he was making progress. But it was not long before SOCE began to have negative consequences on his life. As part of his "reparative therapy," John was counseled that homosexuality was caused by a dysfunctional family life and upbringing and was encouraged to tell his parents about his struggles, which necessarily involved confronting them with what he had come to believe were their failures in raising him. This completely upended John's relationship with his parents and their relationship with each other, as he blamed them and they blamed each other for his homosexual "problem."

After about nine months, John was frustrated with his inability to change his sexual orientation, and became fixated on the notion that he was broken or defective. He became withdrawn and

exceedingly self-conscious, and his grades showed a sharp decline. John began suffering from deepening depression and anxiety, and thought about killing himself. When, after 18 months of SOCE, John finally accepted that he could not change his sexual orientation, his therapist was unable to offer any support, and instead blamed John for not working hard enough to change.

Before ending his therapy, John met another SOCE therapist from Dr. Nicolosi's clinic, David Matheson, who told him that he was being too "perfectionistic" in his expectations about changing his sexual orientation, and that he needed to focus less on "changing" and more on "overcoming" his same-sex attractions. From this and other conversations, John got the sense that Matheson and other self-identified "ex-gays" he met had not actually succeeded in changing their sexual orientation, and that their "struggle" with their sexual attractions continued, no matter how long ago they had begun SOCE treatment or how long they had been married to women.

John quit his "reparative therapy" in the summer of 2004, and delayed going to law school for a year so that he could put his life back together. John is now a lawyer who graduated from the University of Pennsylvania Law School, and considers himself one of the luckier survivors of SOCE. One of the most damaging aspects for him, however, was the deep violation of trust and the abuse of the therapeutic relationship. John opened up to his therapist more than he had to any other person to that point in his life, sharing intimate details and exploring difficult emotions. Yet that relationship was based upon a fraud: that his

sexual orientation was a disorder that could be changed if he tried hard enough.

John is now a happy and well-adjusted person, having embraced his sexual orientation as a fundamental part of his identity. He and his husband Jason are now happily married. As they live in California, they had to wait until after this Court issued its opinion in *Hollingsworth v. Perry* to marry. Being allowed to marry with state sanction is important to John and Jason because the institution of marriage singularly conveys for them the values of family, love, commitment and fidelity—values that they deeply honor. To them, the challenged laws at issue here, along with the Sixth Circuit's failure to recognize LGBT people as a suspect class worthy of heightened constitutional protection, send the message that there is something dysfunctional or disordered about LGBT people as individuals—a view that was the underlying premise of John's participation in SOCE, and one that he and countless others have worked so hard to overcome.

B. Ryan Kendall

Ryan Kendall was raised in a religiously conservative household in Colorado Springs by parents who believed that homosexuals were essentially evil. When he was a young teenager, Ryan's parents discovered that he was gay by reading his journal and were outraged. Ryan remembers his mother looking at him and telling him that he was going to burn in hell. Ryan's parents desperately sought to "fix" him by sending him to a series of SOCE practitioners. After several sessions with a self-described "Christian therapist," Ryan's parents were referred to

NARTH, an organization that purported to practice a more secular form of SOCE. For the better part of a year, Dr. Nicolosi practiced SOCE on Ryan through weekly telephone sessions and in person at NARTH's California treatment center.

During each session, Dr. Nicolosi emphasized that Ryan's "treatment" would help him suppress his sinful and defective same-sex desires. Yet Ryan knew that his sexual orientation was inherent and unchangeable—he knew he was gay in the same way that he knew his height and ethnicity—and he never went through a period of believing that SOCE could change his identity. In fact, during a group therapy session, Dr. Nicolosi introduced a man named Kelly as a "perfect patient" who had been cured of his same-sex attractions. After Dr. Nicolosi left the room, Kelly told Ryan that he was going to a gay bar later that night, and was merely pretending to be cured for the sake of his family. Unfortunately, Ryan's understanding that SOCE could not change his sexuality did not protect him from its harmful effects. Ryan's "treatment" validated his parents' beliefs about homosexuality, encouraging them to reject him and causing him great pain. After he began SOCE, Ryan's parents became verbally and emotionally abusive, telling him that he was abhorrent, disgusting, and evil. The experience virtually destroyed Ryan's place in the world, driving him to the brink of suicide.

Ryan's experience was not unique: LGBT youth who experience high levels of family rejection, as Ryan did, are 8.4 times more likely to report having attempted suicide. Caitlin Ryan et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and*

Bisexual Young Adults, 123 PEDIATRICS 346, 349-50 (2009). Gabriel Arana, another minor undergoing SOCE who Dr. Nicolosi paired with Ryan as part of their "treatment," came perilously close to taking his own life after years of exposure to SOCE because he saw himself as "a leper with no hope of a cure." *See* Gabriel Arana, *My So-Called Ex-Gay Life*, THE AMERICAN PROSPECT, Apr. 11, 2012, http://prospect.org/article/my-so-called-ex-gay-life.

When he was 16, Ryan stopped undergoing SOCE, ran away from home, and legally separated from his parents. For the next decade, Ryan suffered severe depression, including frequent thoughts of suicide. He was filled with self-hatred that derived from SOCE, which had reinforced the message that he was defective and immoral at a time when most adolescents are first discovering their sexual identity. Like many others experiencing total family rejection, Ryan succumbed to periods of drug abuse and homelessness, and his education was derailed for more than a decade. Ryan's exposure to SOCE tore apart his family, leading to more than a decade of estrangement from his parents.

Although Ryan has been able to rebuild his life, returning to school and reconciling with his parents, he continues to struggle with the lasting psychological damage caused by SOCE. Nor will he be able to regain his lost decade—at the critical period in the transition from adolescence to adulthood—which significantly delayed the completion of his education and the beginning of his professional life. Ryan aspires to be a civil rights attorney, but as a result of the derailment

of his education, he will not be able to begin practicing law until he is in his mid-thirties.

Most importantly, Ryan will never regain the many years taken away from him and his family, especially his father, who died on January 16, 2015. Although Ryan and his father reconciled and rebuilt their relationship several years before his death, they were robbed of precious time together; this loss cannot be redressed in any meaningful way.

C. Peter Drake

Peter Drake realized that he was attracted to men when he was 13, but because of the stigma associated with homosexuality, he could not accept that he was gay for much of his life. Peter lived in a heterosexual marriage for 28 years, fathering two children. Although he was faithful to his wife, his attraction to men was always present. While Peter avoided same-sex relationships for decades, he was never able to change who he was, and eventually realized that he was fighting a losing battle. When he was 46, Peter sought out a licensed SOCE therapist in an attempt to change his sexual orientation.

For nearly three years, Peter subjected himself to weekly SOCE "therapy" sessions that were extremely harmful to his mental health. His therapist's change efforts ranged from having Peter imagine himself lusting for parts of the female body, to attempting to "father" Peter to correct the supposedly inadequate parenting that the therapist believed to be a cause of his homosexuality. After three years without progress, Peter became increasingly discouraged, ashamed, and

humiliated, as he perceived his inability to change his sexual orientation as a personal failure. His hopes that he could be "cured" were dashed, and his therapist offered no comfort, leaving him broken. Peter's exposure to SOCE severely worsened his depression, and he came very close to attempting suicide.

Through work with a different therapist, eventually Peter was able to accept himself as a gay man, coming out to his family and friends when he was 53. With support from his wife, Peter's marriage ended amicably. Peter now recognizes that his sexual orientation is an immutable trait and fundamental part of his identity: he was able to "pass" as straight for decades, but at the cost of burying his true self. Recently, a pastor said the words that Peter had needed to hear so long ago: "Peter, I am glad you are ready to be the man God made you to be."

D. James Guay

As the son of a preacher raised in a fundamentalist Christian household in Southern California, James Guay was plagued with guilt and shame when he realized at the age of 12 that he was gay. Brought up in a religiously conservative household, James was taught that homosexuals were inherently flawed and sinful, and was desperate to change his sexual orientation. He spent the next eight years of his life making every effort to eliminate his same-sex attractions before finally recognizing that he could never truly change this fundamental part of himself.

After four years of attempting to change on his own—through church involvement, Bible reading,

and prayer—James had succeeded only in internalizing the Biblical message that he was an "abomination," increasing his feelings of self-hatred. At the age of 16, James disclosed his internal struggle to his parents, who helped him to find a self-described "ex-gay" licensed psychologist, Dr. James Wilder, who practiced a form of SOCE referred to as "conversion therapy." James was initially filled with a sense of relief and a newfound hope that he could change his sexual orientation through SOCE. Like many other LGBT minors, James voluntarily agreed to undergo SOCE and was fully dedicated to the weekly sessions for a year. As an impressionable teenager determined to rid himself of his "disease," James believed for a time that undergoing SOCE would help him to become heterosexual. Yet the promises of change never materialized, and his exposure to SOCE instead caused lasting psychological trauma.

As part of James's "conversion therapy," Dr. Wilder counseled that homosexuality can result from inadequate parenting, which wreaked havoc on James's relationship with his parents by transforming his self-hatred into anger at them. Dr. Wilder also required James to examine his past to search for an actual set of events that caused his same-sex desires, which put extraordinary pressure on him to create false memories, and obliterated his sense of self. His exposure to SOCE deepened his depression, shame, and feelings of isolation, rejection, and failure. For years, he suffered from fear of intimacy, severe anxiety, and from addictive behaviors.

When James realized that, despite his discipline and devotion, he could never change who he truly

was, his worst fears were realized and he saw himself as intrinsically broken. He was left to pick up the pieces with the help of affirmative psychotherapy that did not demand that he change the unchangeable.

James now happily recognizes that his sexual orientation is an immutable trait that is a fundamental part of his identity. He has worked as a licensed therapist for more than a decade, helping LGBT clients overcome the harmful effects of SOCE. His clients who underwent SOCE are often distrustful, scared, and in a great deal of pain, exhibiting symptoms similar to those of people who suffered early childhood traumas. Through his work, James has learned that his experience was a common one: many of his clients voluntarily underwent SOCE because they, like he, desperately needed to conform their identities to the expectations of their families and communities.

E. Mathew and Jane Shurka

Mathew Shurka grew up in a traditional Jewish home in Great Neck, New York. His family did not know anyone who was openly gay and were ignorant about sexual orientation. At the age of 16, Mathew confessed that he was attracted to other boys. His father told Mathew that he loved him no matter what, but almost immediately expressed fears that his son would be bullied and ostracized, and that Mathew's future was bleak due to society's stigma against gay people. Seeking to protect his son from an unhappy life, Mathew's father found a "conversion therapist" based in the suburbs of Los Angeles who claimed that he could turn Mathew straight in six weeks.

Deep down Mathew knew that he was and would remain gay, but he was afraid of losing his father's approval and unwilling to confront coming out to his peers, so he was hopeful about the prospect of changing his sexual orientation through SOCE. His mother, Jane Shurka, went along with the decision for Mathew to undertake conversion therapy even though she did not share her husband's concern that Mathew's sexuality would ruin his life. Because of her ignorance about sexual orientation, Jane put her trust in the licensed therapist who claimed that Mathew was suffering from a psychological condition that could and should be cured. It is a decision that she deeply regrets.

For the next three years, Mathew underwent telephone SOCE sessions multiple times per week. His therapist counseled that there was no such thing as love between two people of the same sex, and that homosexual desires are caused by traumatic wounds suffered in early childhood. He instructed Mathew that he could "fix" himself by spending as much time as possible with other men—in order to learn how to "act straight"—and by avoiding contact with women, including his mother and two sisters—both to prevent him from learning effeminate behaviors and to transform women into something mysterious and attractive to him. Mathew soon became dependent on his therapist to guide him through each day, fearing that he could stumble down the wrong path at any moment and bring shame to himself and his family. The SOCE sessions increased Mathew's confusion about his identity; he suffered from depression and anxiety, and began to struggle academically. As he put pressure on himself to

have sex with women to prove that the therapy was working, he began experiencing severe and frequent panic attacks. Mathew's depression deepened due to the feelings of failure at being unable to change himself, and he spent months at a time during his five years of conversion therapy contemplating suicide.

Following his therapist's instruction, Mathew refused to communicate with his mother Jane and his sisters for three years, unraveling what had been a close-knit family. This was incredibly painful for Mathew, Jane and his sisters, who had been extremely close until he was exposed to SOCE. Jane could tell very early on that the SOCE sessions were only making her son unhappy, which was unbearable for her. When Jane observed Mathew with girls from his high school who he began dating, she could see how unnatural it was for him and realized that her son was in turmoil because he was trying to be something he was not. Jane would try to tell Mathew that he would feel better if embraced his true identity, but he would yell at her for undermining his therapy. Due to his therapist's admonition that interacting with his mother would stunt his progress, Mathew felt both infuriated and devastated when Jane told him: "Matt, you're gay, and it's okay."

By the time Mathew graduated high school, his parents had begun divorce proceedings; Jane's anguish over the damage that SOCE was inflicting on Mathew and her husband's insistence that the "treatment" was necessary was a factor in the breakup of their marriage.

At the age of 19, with Jane's encouragement, Mathew severed ties with his conversion therapist

and moved to Los Angeles, where he began treatment with a psychologist who was openly gay. The feelings of inadequacy that had been nurtured by SOCE remained deeply engrained inside him and got in the way of his treatment. Mathew continued to believe that he was a failure for not being able to change his sexual orientation and so, after about six months, he sought out another conversion therapist, a self-described "ex-gay" Mormon. He also dropped out of school and became so depressed that at times he could not leave his apartment for days.

Eventually, over the course of several years, Mathew was able to overcome much of the damage to him from his exposure to SOCE and reassembled his life. He moved to New York City, reconnected with his mother and sisters, and began working at a restaurant, where he met co-workers who were openly gay and slowly realized that he could only be happy if he accepted who he was. At the age of 23, Mathew found the courage to come out as a gay man. Now 26, Mathew has returned to school and plans to become an architect.

Jane deeply regrets that she hurt her son through her agreement to expose Mathew to SOCE. The efforts to change her son's sexuality were a tragedy for him and for her whole family. She does not blame her ex-husband, who acted out of the ill-founded belief that SOCE would help Mathew live a better life, free from the discrimination and animosity that LGBT people face in our society. To Jane and Mathew, the fault lies with the stigma and marginalizing of LGBT people that encourages some to impose SOCE on their children. For a long time, Mathew was deeply angry and resentful of his father, and they were estranged for five years. After he came out as a

gay man, Mathew was able to reconcile with his father, and they have been rebuilding their relationship.

F. Maris Ehlers

Maris Ehlers's older brother, Kirk Andrew Murphy, was the original poster child for SOCE. On December 21, 2003, at the age of 38, Kirk committed suicide. At the time, Maris did not understand why. After learning more about the SOCE "therapy" that Kirk was subjected to by the State of California, Maris wonders how Kirk was able to live as long as he did.

In 1970, when Kirk was almost five years old, his parents enrolled him in a federally-funded experimental study at the University of California, Los Angeles ("UCLA"), which used aversion therapy to discourage feminine behaviors in young boys, based on the now-discredited theory that this would prevent them from growing up to be gay. Under the pseudonym "Kraig," Kirk became a case study, and later a repeatedly-cited "success story," of then-UCLA doctoral student George A. Rekers, who has since become one of the leading proponents of subjecting children to SOCE. *See* George A. Rekers & O. Ivar Lovaas, *Behavioral Treatment of Deviant Sex-Role Behaviors in a Male Child*, 7 J. APPLIED BEHAV. ANALYSIS 173-190 (1974).

At the UCLA Gender Identity Clinic, Kirk was placed in a playroom filled with stereotypical "boys' toys" and "girls' toys." *Id.* at 176. Kirk's mother was instructed to smile and compliment him when he played with the "boys' toys," and to shun him when he played with "girls' toys." *Id.* at 179. Kirk became so distraught by his mother's

refusal to acknowledge him after he picked up a "girls' toy" that he would break down crying, and the researchers had to reassure her "empathetically that she was doing the right thing and was doing it well. . . ." *Id.* Maris does not fault her mother for following the directions of UCLA "therapists," whom she trusted not to ask her to do anything that would harm her son. However, Maris does not doubt that requiring her mother to repeatedly reject Kirk was cruel and damaging.

The UCLA researchers exported Kirk's SOCE "treatment" to the Murphy home, training Kirk's mother to award blue poker chips for masculine behavior and red poker chips for feminine behavior. *Id.* at 180-81. Blue chips were to be exchanged for rewards, like candy, and red chips for punishments, including "physical punishment by spanking." *Id.* at 180. At the end of each week, when the chips were tallied, Kirk's father would administer the spankings by whipping Kirk's bare bottom with a belt. While Maris was too young to remember the poker chip system imposed on the family as part of Kirk's SOCE "treatment," she does remember sneaking into Kirk's room to comfort him after the whippings.

After ten months, the UCLA researchers ended their experimental SOCE treatment on Kirk and declared victory, concluding that they had succeeded in their attempt "to extinguish feminine behavior and to develop masculine behavior." *Id.* at 179, 186. Contrary to the researchers' self-congratulation, their "therapy" had caused extraordinary damage to Kirk, without changing his sexual orientation. After undergoing SOCE, Kirk became withdrawn, isolated, and incredibly self-conscious. He obsessed over what others thought

of him, revealing through questions to Maris that he was constantly over-analyzing the words and actions of others. Maris could never understand the visible pain that Kirk carried with him, and his belief that no one could ever love him as he was. She believes that SOCE left Kirk stricken with the feeling that he was broken.

At the age of 17, Kirk attempted suicide for the first time. The following year, Kirk explained to Dr. Richard Green, one of the leading advocates for removing homosexuality from the DSM in 1973, that he had a sexual encounter with a man weeks before his suicide attempt. Jim Burroway, *What Are Little Boys Made Of?: An Investigation of an Experimental Program to Train Boys to be Boys*, BOX TURTLE BULLETIN, June 7, 2011, http://www.boxturtlebulletin.com/what-are-little-boys-made-of5 (quoting Richard Green, THE "SISSY BOY SYNDROME" AND THE DEVELOPMENT OF HOMOSEXUALITY 313-15 (Yale University Press, 1987)).[2] Kirk told Dr. Green that he felt guilty that the SOCE "treatment" he underwent at UCLA had failed to "fix" him, and admitted that he had tried to kill himself because he did not want to be gay. *Id.*

Kirk eventually came out to Maris as a gay man; even the extreme form of SOCE that he was subjected to as a child was unable to change his sexual orientation. But Kirk was not able to recover from the severe harm that he suffered due to his exposure to SOCE, and ultimately took his own life. Through the painful process of losing her

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[2] Dr. Richard Green used Kirk as a prominent case study in his book, under the pseudonym "Kyle." He confirmed that "Kyle" is Kirk to Maris in 2010.

brother and then learning what was done to him under the auspices of government-sanctioned SOCE "treatment," Maris became committed to protecting others from being exposed to these dangerous and ineffective efforts to change this fundamental and inherent part of themselves.

CONCLUSION

By illustrating the immutability of sexual orientation and the history of discrimination faced by LGBT people based solely on a characteristic that provides no basis for unequal treatment under the law, *amici* very much hope that their experiences have helped the Court to recognize that sexual orientation is a suspect classification for equal protection constitutional analysis purposes. For the foregoing reasons, and for the reasons stated in the Merits Briefs of Petitioners, *amici curiae* urge the Court to reverse the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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